



POLE ATTACHMENT LICENSE AGREEMENT

BETWEEN

MONTGOMERY COUNTY, MARYLAND

and

[LICENSEE]

_____ , _____

POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment License Agreement (“Agreement”), is entered into on _____, _____ (“Effective Date”) between Montgomery County, Maryland (“County”), and _____ (“Licensee”), its successors and assigns, collectively known as the “Parties.”

WHEREAS, Montgomery County has made significant investment in the construction, installation, acquisition and maintenance of public streetlight poles, pedestrian signal poles, County-owned light poles in parking lots (collectively, the “Poles”), and street furniture. As owner of the Poles and street furniture, the County desires to make the Poles and street furniture available for use in connection with the provision of personal wireless services, so long as its interests in the design, placement and operation of the same are not adversely affected, and so long as it is fairly compensated for use of the same;

WHEREAS, the Licensee desires to modify and make use of certain County-owned Poles and street furniture within the public rights-of-way and on other County-owned and controlled property for the purpose of providing County residents, businesses and visitors with robust and reliable wireless communications services;

WHEREAS, the County desires to permit such use without limiting the obligation of Licensee to also comply with County regulations governing placement of wireless communications facilities, or use of public rights-of-way or other County property; and

WHEREAS, coterminous with this Agreement, the Licensee is willing to maintain the Poles and street furniture to which the Licensee attaches facilities, and compensate the County for the grant of this Agreement

NOW THEREFORE BE IT RESOLVED, in consideration of the terms and conditions contained in this Agreement, the County and the Licensee do hereby agree:

SECTION 1. DEFINITIONS

1.1 Antenna. Any structure or device used to collect or radiate electromagnetic waves, of the maximum size of Standard A antenna as set forth in Montgomery County Code 59-3.5.2.C.1.b, as amended.

1.2 Authorized Replacement Pole. An Eligible Pole that has been replaced at Licensee’s expense for the purpose of supporting Authorized Pole Attachment or Attachments.

1.3 Authorized Pole Attachments. An Antenna used to provide personal wireless services and any commingled information services that are attached to County-owned Poles and equipment used to support operation of such Antenna including power supplies and meters.

1.4 Applicable Law. All applicable federal, state and County laws, regulations and requirements governing: the installation, maintenance, and operation of antennas and communications facilities, Poles, and street furniture and the occupation of the public right of way or County owned and controlled property. Applicable Law includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”); specifications set forth in the most recently published Montgomery County Department Transportation (“DOT”) streetlight design and technical standards available at https://www.montgomerycountymd.gov/DOT-Traffic/Standards/Lighting/streetlight_specs.html standards; right of way permit application requirements of the Montgomery County Department of Permitting Services (“DPS”); and the County’s building, road and zoning codes; and the County franchise law.

1.5 DOT. Montgomery County Department of Transportation or its designee.

1.6 DPS. Montgomery County Department of Permitting Services or its designee

1.7 Eligible Pole. County-owned Pole designated by Montgomery County to which Authorized Pole Attachments may be made. Traffic signal poles are expressly reserved for public safety use and are not Eligible Poles and are expressly not included in this Agreement.

1.8 Eligible Pole Confirmation. Confirmation issued by the County that a County-owned Pole may be used as an Authorized Replacement Pole or for Authorized Pole Attachments, subject to regulatory approval.

1.9 Luminaire. A complete lighting unit consisting of a lamp or lamps together with the parts designed to control the lamp or lamps, distribute the light, to position and protect the lamps, and to connect the lamps to the power supply. The term does not include the luminaire arm.

1.10 Notice to Repair. Notice issued by Montgomery County to Licensee to repair damage to, perform maintenance on, or remove graffiti from an Authorized Pole Attachment or Authorized Pole within a specified period of time.

1.11 Notice of Non-Repair. Notice issued by Montgomery County to the Licensee when a Notice to Repair has not been completed within the time provided.

1.12 Pedestrian Signal Head. A complete signaling unit consisting of a pedestrian signal display or displays, together with the parts designed to control the displays, and provide audible or visual alerts, mount the same to vertical structures, and to connect the same to the power supply.

1.13 Pole. A County-owned vertical structure and associated foundation and landscaping at a fixed location primarily dedicated to the public purpose of illuminating rights-of-way or a parking lot owned or controlled by the County, or providing signals to pedestrians, but excluding poles used for vehicular traffic signals.

1.14 Power Companies. Electric power suppliers authorized to offer electric service in Maryland

1.15 Street Furniture. County-owned objects and pieces of equipment installed along streets and roads for various public purposes other than traffic control or street lighting, including benches, bollards, postboxes, planting containers, public sculptures, and waste receptacles.

1.16 TEBS. Montgomery County Department of Technology & Enterprise Business Solutions or its designee.

SECTION 2. TERM

The term of this Agreement is a period of five (5) years (the “Initial Term”), commencing on the Effective Date. The Agreement may be renewed by agreement of the parties.

SECTION 3. SCOPE OF AGREEMENT

3.1 Grant of Authority. During the term of this Agreement, Licensee is authorized, on a non-exclusive basis, and subject to the terms of this Agreement and Applicable Law, to use and replace Poles and street furniture for the purpose of installing, operating, and maintaining Authorized Pole Attachments or Authorized Replacement Poles. All parts of Authorized Pole Attachments must be owned and operated by Licensee, other than power supplies owned by an electric power supplier authorized to offer electric service in Maryland.

3.2 No Grant of Authority.

3.2.1 Nothing in this Agreement will be construed as granting to Licensee the authority to install an Authorized Replacement Pole at a particular location or to install Authorized Pole Attachments on a particular Pole. Specific authority to install an Authorized Replacement Pole or Authorized Pole Attachment must be obtained from the County. Licensee expressly acknowledges that this Agreement does not constitute a conveyance of a real property interest and that Authorized Replacement Poles will continue to be used for the public purpose of providing streetlight illumination or pedestrian traffic signaling. This agreement does not confer any right to install Antennas upon privately owned poles or structures. This Agreement does not constitute a license or franchise to provide cable service as defined in Section 602 of the Communications Act of 1934, as amended, 47 U.S.C. § 522(6), or any other service for which a franchise or other approval is required. This Agreement does not authorize the use of the County rights-of-way or the occupation of any other real property. The Licensee must also obtain a current franchise, license, lease or other applicable authority from the County in order to install, maintain and use the rights-of-way or other property.

3.2.2 Subject to obtaining permits required under Applicable Law, an Eligible Pole Confirmation may authorize or require Licensee to replace or use street furniture for the placement of portions of an Authorized Pole Attachment in a stealth configuration, or may require the same to be undergrounded or placed within or otherwise integrated into an Eligible Pole or an Authorized Replacement Pole, as the County may determine is most consistent with maintaining the design and surroundings of a Pole. Aboveground equipment must be stealth design.

3.3 No Grant of Property Right. The County will retain ownership of the Poles and the street furniture. Upon replacing any Pole, or street furniture, and prior to commencing any use of the same, Licensee shall execute such documents, and provide such releases as the County may deem necessary to ensure that the County holds title, free and clear to the replacement facility. The Licensee retains its right to Antennas and associated equipment installed as part of the Authorized Pole Attachments.

3.4 No Warranty. The County makes no express or implied warranties regarding public rights-of-way, or any other property on which a Pole or street furniture may be located all of which are hereby disclaimed, and the County makes no implied warranties, except to the extent expressly and unambiguously set forth in this Agreement. The County expressly disclaims an implied warranty of merchantability or fitness for a particular purpose. The Licensee acknowledges and agrees that the County does not warrant the condition or safety of the property, or that it may grant Licensee the right to use or occupy such property and Licensee further acknowledges and agrees that it has an obligation to inspect the site surrounding the Poles, prior to commencing any work upon or entering the premises; and to obtain any rights of access that may be required if the Poles or street furniture are located on property that is not under the sole control of the County, or that is subject to limitations on its use (as may be the case with property located within easements).

3.5 County Not Required to Replace Poles. Nothing in this Agreement will may be construed to require the County to replace Poles for the benefit of Licensee.

3.6 Compliance with Applicable Law. The Licensee must comply with all Applicable Law. Licensee understands that this Agreement is not in lieu of its obligation to obtain permits, including permits for the placement of wireless communications facilities. Licensee acknowledges that the County may develop rules, regulations, and specifications that apply to the construction, reconstruction, attachment, movement, placement, installation, location, removal, reattachment, reinstallation, replacement, or relocation of any facilities in the public rights-of-way, and such rules, regulations, and specifications must govern Licensee's activities as if they were in effect at the time the Agreement was executed, and shall not be considered an impairment of the rights provided under this Agreement.

SECTION 4. LICENSEE OBLIGATIONS

4.1 Installation. Licensee must be responsible for installation and maintenance of the Authorized Replacement Pole and the License's Authorized Pole Attachments and affected street furniture. Licensee must obtain County approval of contractors or staff used to perform installations, replacements, and maintenance. The County will maintain the Luminaire, and the Pedestrian Signal Head on Authorized Replacement Poles, and the County reserves the right to maintain all or any portion of any specific street furniture that is used as part of License's Authorized Pole Attachments.

4.1.1 If Licensee installs or maintains the Authorized Replacement Pole and the License's Authorized Pole Attachments and affected street furniture in a manner that is not compliant with the Eligible Pole Confirmation, and associated permits, the County, in addition to exercising rights under Section 4.4.1 and Applicable Law, may issue a written Notice to Correct, requiring Licensee to correct the non-compliance within thirty (30) days and, if the Licensee fails to do so, the County may remove the Authorized Replacement Pole, Authorized Pole Attachments, and affected street furniture, and charge Licensee costs the County incurs to remove the facilities, including the costs of replacement and restoration.

4.1.2 The County may require Licensee to install a temporary Pole during any period when Licensee is installing, repairing or replacing an Authorized Replacement Pole or Authorized Pole Attachment; and require Licensee to remove temporary facilities and restore property affected thereby. If Licensee fails to install or remove the temporary facility, the County may install or remove the temporary Pole and the Licensee must reimburse the County for all costs the County incurs in connection with the installation or removal of the temporary Pole and installation, and the restoration of property affected thereby.

4.2 Pole Attachment Approval Procedures. Licensee must comply with the following procedures:

4.2.1 Licensee must submit to the County a request for an Authorized Replacement Pole and Authorized Pole Attachment to the County on a County form. The Licensee must provide a timeline for completing the work and a plan for ensuring that the streetlighting and pedestrian signals remain functional throughout construction, except as otherwise authorized by the County.

4.2.2 The County will review designs for compliance with its safety, engineering, aesthetic, and operational requirements. The County may choose to deny use of a specific Pole or to require design modification to ensure: the Authorized Replacement Pole and Authorized Pole Attachments will be and remain compatible in appearance with Poles and affected street furniture in the same corridor; there is no adverse effect on the operation or functionality of the Pole, or street furniture, or equipment (such as cameras)

attached to the same; compliance with Applicable Law, including applicable FCC RF emissions standards, or ensure persons or properties are not endangered; the use would not violate, or expose the County to any liability for violation of any condition (including bonding) affecting the Pole or the property on which it is placed; or the use does not require the County to incur uncompensated expenses. Without limitation, the County may accept or modify the plan for completing construction and for maintaining the functionality of streetlighting and pedestrian signals.

4.2.3 If the County the accepts or modifies the design and plan for completing construction and maintaining the functionality, the County will issue an Eligible Pole Confirmation with appropriate conditions. Proposed modifications to Authorized Replacement Poles and Authorized Pole Attachments shall be subject to the same process. The County is not required to approve any modification.

4.2.4 After an Eligible Pole Confirmation is received, Licensee must obtain regulatory approvals from the County. Work on the Authorized Replacement Pole or Authorized Pole Attachment may commence only after the Licensee has received all regulatory approvals.

4.2.5 The County reserves the right to refuse to approve any Authorized Replacement Pole or Authorized Pole Attachment if the Licensee has not reimbursed the County for costs, or paid Annual Compensation, or is not in compliance with this Agreement.

4.3 Timeline to Exercise Rights. If Licensee does not complete work on the Authorized Replacement Pole or Authorized Pole Attachment authorized by an Eligible Pole Confirmation within one hundred eighty (180) calendar days of the Confirmation, or the time allowed under regulatory permits issued, whichever is later, the County may, but has no obligation to, use the space scheduled for Licensee's Attachment(s) for its own needs or to revoke the Confirmation.

4.4 Maintenance. Except for equipment that the County maintains pursuant to Section 4.1, the Licensee must, at its own expense, maintain the Authorized Replacement Pole, the Authorized Pole Attachments, and street furniture in safe condition and good repair, in accordance with all Applicable Laws, including obtaining required permits.

4.4.1 If an Authorized Replacement Pole or Authorized Pole Attachment presents, in the sole opinion of the County, a threat to the public safety, health, or welfare, or interferes with County operations, the County may issue an Emergency Notice to the Licensee. The Licensee will use all reasonable efforts to correct the threat or interference immediately. If the Licensee fails or is unable to correct the threat or interference immediately, or if in the sole opinion of the County, immediate action is required without notice, the County may take corrective action and require reimbursement of its costs from the Licensee.

4.4.2 Subject to section 4.4.1, if an Authorized Replacement Pole or Authorized Pole Attachment is found to be in violation of Applicable Law, or is damaged and needs to be repaired, or is marred by graffiti, the County will issue a written Notice to Repair. The Licensee must remove, repaint, clean, or repair graffiti damage within five (5) business days of receiving the notice. All other violations or damage must be repaired within thirty (30) days of the issuance of a notice.

4.4.2.1 The Licensee may request additional time to repair based on the specific violation or damage and the County may grant a reasonable extension of time to repair if the Licensee demonstrates it has made a good faith attempt to repair within the timeframes set forth herein.

4.4.2.2 If repairs are not timely completed and the Licensee has not received an extension of time to repair, the County may perform the repair itself, or remove the damaged Authorized Replacement Pole or Authorized Pole Attachment and affected street furniture forty-five (45) days after issuance of the notice. The Licensee must reimburse the County all costs it incurs in connection with repair or removal, including removal of the damaged Authorized Pole Attachment, installation of a Pole or street furniture without the Authorized Pole Attachment, and restoration of all property affected thereby.

4.4.3 Subject to Section 4.4.1, if an Authorized Replacement Pole or Authorized Pole Attachment or affected street furniture is damaged and needs to be replaced, the County will issue a written Notice to Replace to the Licensee.

4.4.3.1 Within ninety (90) days of issuance of the notice, Licensee must complete the replacement, or, if it chooses to discontinue use of the Pole or affected street furniture, restore the Pole and street furniture and affected property to the standards specified in Section 12.4.1. If Licensee intends to discontinue use, it will so notify the County within forty-five (45) days of the notice.

4.4.3.2 If within the time specified, the Licensee fails to replace its Authorized Replacement Pole or Authorized Pole Attachment or affected street furniture, or fails to remove and restore, the County may install a Pole or street furniture without the Authorized Pole Attachments and the Licensee must reimburse the County for all costs it incurs including removal of the damaged Authorized Pole Attachment, installation of a Pole or street furniture without the Authorized Pole Attachment, and restoration of all property affected thereby.

4.5 Interference. Licensee must not allow any of its facilities, including the Authorized Pole Attachments, to impair the ability of the County to use any pole or facility, and Licensee's facilities or Authorized Pole Attachments must not cause any radio frequency interference to the operation or function of County facilities.

4.6 Protective Equipment. Licensee and its employees and contractors must use and install adequate protective equipment to ensure the safety of people and facilities.

4.7 Separate Power Supply. Licensee must install power to its Authorized Pole Attachments on a separate circuit from the Luminaire or Pedestrian Signal Head, with an electrical wire installed from the Authorized Pole Attachments to the County's adjacent underground splice box, or such other location as the County may approve. The placement of the power equipment must enable the Licensee, the County or the power company to power down equipment while keeping the Luminaire and Pedestrian Signal Head on and only require powering down the Luminaire or Pedestrian Signal Head during replacement of the Pole.

4.8 Power Cut-Off. County and the Power Company shall have a right to cut the power to Authorized Pole Attachments in order to perform work on or near Poles or street furniture. In cases where County cuts power, in ordinary circumstances, County's authorized field personnel will contact Licensee's designated point of contact to inform Licensee of the need for a temporary power shutdown. Upon receipt of the call or contact, Licensee will power down its antenna remotely, which must occur during normal business hours and with twenty-four (24) hours advance notice. Where, in the sole opinion of the County, work is required to address a threat to the public safety, health, or welfare or to prevent interference with County operations, the power-down will be with such advance notice as may be practicable and, if circumstances warrant, the County may effect the power-down by operation of the power disconnect switch without advance notice to the Licensee and will notify the Licensee as soon as possible. Once the work has been completed and the worker(s) have departed the exposure area, County will (i) restore power if it cut power; and in any case (ii) inform Licensee as soon as possible that work has been completed.

4.9 Periodic Inspection by Licensee. The County may require the Licensee to conduct a safety and structural integrity survey of specific Authorized Pole Attachments, and associated Poles, which must be certified by a professional engineer within sixty (60) days of the County request. Prior to renewal of this agreement, the Licensee must conduct a safety and structural integrity survey of all Authorized Pole Attachments, and associated Poles, that must be certified by a professional engineer. Licensee must provide a written copy of the results of the survey to the County promptly and identify any Authorized Pole Attachments and associated Poles presenting a potential structural or public safety issue and the Licensee's plan to remedy these issues.

4.10 Staffed Emergency Contact. Licensee must maintain a staffed 24-hour emergency telephone number, or similar notification system, where the County can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the Parties. Such an emergency contact must be qualified and able to respond to the County's concerns and requests. If the Licensee fails to maintain a qualified and responsive emergency contact, the County is relieved of notice obligations under this Agreement.

SECTION 5. COMPENSATION

5.1 Required Compensation. The Licensee must compensate the County for the use of any Pole, or street furniture. This fee may be increased as permitted by law and to recover costs incurred by the County in connection with the Licensee's installation and use of the Poles and street furniture. The compensation herein is in addition to any generally applicable fees including

permit or review fees, and in addition to compensation for use or occupation of rights of way or other County-owned property.

5.1.1 Where the Pole Attachment is a small wireless facility within the meaning of FCC regulations, the initial fee per antenna is \$270 per year per Pole.

5.1.2 Where the Pole Attachment is not a small wireless facility within the meaning of FCC regulations, the initial fee per antenna is \$540 per year per Pole.

5.1.3 If, as a result of Licensee's use of a Pole or street furniture, County is subject to any additional or higher taxes or fees, Licensee must pay those taxes or fees.

5.2 Due Date. Compensation for the first calendar year for use of a County Pole or street furniture is due upon issuance of all DPS permits necessary to begin construction work on an Authorized Replacement Pole or Authorized Pole Attachment. Thereafter, compensation (including for removal and restoration costs) is due on January 2 of the calendar year.

5.3 Not in Lieu of Tax. Without limiting the foregoing, the compensation provided for in this Section is not in lieu of any fee or tax to which Licensee or any other person or entity may be subject or, relieve the Licensee of any obligation to collect and remit any tax in accordance with Applicable Law.

5.4 Audit. The acceptance of any payment is not an accord or satisfaction. Upon reasonable notice by the County to audit Licensee's books and records, Licensee must allow such books and records to be reviewed by the County by electronic record sharing to determine whether the fees owed under this Agreement are being paid. The County may also inspect Authorized Replacement Poles and Authorized Pole Attachments to ensure that the fees owed under this Agreement are being paid. If an audit or inspection shows that Licensee has underpaid the amount due hereunder by five percent (5%) or more for any year reviewed, the Licensee must pay the amount due and the cost of the audit or inspection plus a ten percent (10%) administrative fee.

5.5 Late Payments. The County will charge interest on any late payment at the statutory interest rate on judgments under State law, or if there is no such rate, the prime rate charged by the bank the County uses as its main depository, plus three percent (3%).

SECTION 6. ADDITIONAL COUNTY AUTHORITY

6.1 Designees and Contactors. County may authorize designees and contractors to perform work on its behalf.

6.2 Removal and Relocation. The rights granted hereunder are secondary to the rights of the County. The County may require the Licensee to remove and relocate Authorized Replacement Poles and Authorized Pole Attachments at the Licensee's expense:

6.2.1 The County reserves the right to remove or relocate the Licensee's Authorized Replacement Poles and Authorized Pole Attachments without notice and to require reimbursement from the Licensee for the cost of removal or relocation where, in the sole opinion of the County, work is required to address a threat to the public safety, health, or welfare or to prevent interference with County operations.

6.2.2 If removal or relocation of a Pole is required to facilitate or accommodate the construction, completion, repair, relocation, or maintenance of a County or other governmental project or facility including: the attachment of cameras, monitoring and other equipment to a Pole; removal or redesign of streetlighting in a particular area; or sale or abandonment of the property on which a Pole or street furniture is located, or for other reasons where Section 6.2.1 does not apply, the County will issue a Notice to Remove or Relocate to the Licensee. If an Authorized Replacement Pole or Authorized Pole Attachment is not removed or relocated ninety (90) days after notice, the County may remove or relocate the Pole or Authorized Pole Attachments and require the Licensee to reimburse the County's costs.

6.3 Abandonment. If any or all of Licensee's Authorized Replacement Poles and Authorized Pole Attachments have been abandoned or are no longer in use, the County will issue a Notice of Abandonment. The Licensee must demonstrate to the County that the Authorized Pole Attachment will be placed back in service, or the Licensee must remove the Authorized Pole Attachment within ninety (90) days of the notice and pay the cost of a replacement Pole and street furniture or the cost to remove the Authorized Pole Attachment. If the Licensee fails to remove the Authorized Pole Attachment within ninety (90) days or obtain an extension of time from the County, the County may remove the Authorized Replacement Pole and Licensee's Authorized Pole Attachment and require the Licensee to reimburse the County for all costs it incurs including removal, installation of a replacement Pole or affected street furniture without the Authorized Pole Attachment, and restoration of all property affected thereby.

6.4 Right of Access. The County retains a right of access to all portions of Poles, Authorized Replacement Poles, and Authorized Pole Attachments, for any purpose.

6.5 General Inspections. The County reserves the right to make periodic inspections of Licensee's Attachments. Such inspections, or the failure to make such inspections, must not operate to relieve Licensee of any responsibility or obligation or liability assumed under this Agreement.

6.6 Periodic Safety Inspections by County. Without limiting its rights under Section 6.4 and 6.5, the County may at its option perform a safety inspection to identify any safety violations of Authorized Replacement Poles and Authorized Pole Attachments ("Safety Inspection"). Licensee must promptly assist and reasonably cooperate with County in the conduct of any Safety Inspection to which it has been given notice.

6.7 Records. Licensee shall provide County access to its records, including maps and operational records, and respond to requests for information as the County may reasonably request

to permit County to review compliance with this Agreement, or to exercise any rights reserved hereunder. A response to a County request shall be provided within thirty (30) days of a request therefore, or such shorter period as may be required to permit the County to satisfy deadlines for action under Applicable Law.

6.8 Enforcement Costs. In addition to all other charges available at law or at equity, the County may require the Licensee to pay the County's cost to enforce if the Licensee violates this agreement or fails to correct a violation after notice.

SECTION 7. LIABILITY AND INDEMNIFICATION

7.1 Indemnification. Licensee agrees at its sole cost and expense to indemnify, protect, defend and hold harmless the County, the County Executive, County Councilmembers, and the County's officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the activities or placement of Authorized Replacement Poles and Authorized Pole Attachments by the Licensee, its officers, employees, agents, consultants, attorneys, and contractors, described in this Agreement, except to the extent arising from or caused by the gross negligence or willful misconduct of the County, the County Executive, County Councilmembers, and the County's officers, employees, agents, or contractors.

7.2 Waiver. Licensee waives any and all claims, demands, causes of action, and rights it may assert against the County on account of any loss, damage, or injury to Authorized Pole Attachments or Authorized Replacement Poles arising in any manner from the Licensee's occupancy of the public right-of-way or arising from the installation, maintenance, replacement, or relocation of any Authorized Pole Attachment, Authorized Replacement Pole or Pole, except to the extent caused by or arising from the gross negligence or willful misconduct of the County. The County is not liable for any damage to Licensee's facilities. The County is not obligated to replace or repair any Pole or Authorized Pole Attachment that is damaged, whether or not it is essential to the operation of Authorized Pole Attachments. Nothing herein may be construed to waive the County's governmental immunity.

7.3 Limitation of Waiver. The waiver by either party of any breach or violation of any provision of this Agreement will not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

SECTION 8. INSURANCE

8.1 General Liability and Automobile Insurance. Licensee must carry and maintain at all times during the term of this Agreement commercial general liability insurance and commercial automobile liability insurance protecting Licensee and the County via the additional insured provision endorsement in an amount of two million dollars (\$2,000,000) (including any combination of umbrella or excess coverage if needed to meet the limits required) per occurrence (combined single limit), including bodily injury and property damage, with coverage to include personal injury, products-completed operations and independent contractors, per each occurrence resulting from Licensee's performance pursuant to this Agreement. General liability insurance must include coverage for damage or claims related to electromagnetic fields. Such insurance must name the County, the County Executive, its County Council members, officers, and employees, agents, and contractors as additional insured for any liability arising out of Licensee's performance pursuant to this Agreement, and include a suitable additional-insured endorsement acceptable to the County. Coverage must be provided in accordance with the limits specified and the provisions indicated herein. Claims-made policies are not acceptable. Such insurance must not be canceled or materially altered to reduce coverage until the County has received at least thirty (30) days advance written notice of such cancellation or change, sent to the Department of Technology & Enterprise Business Solutions. Licensee must be responsible for notifying the County of such change or cancellation and obtaining replacement coverage prior to cancellation, or prior to a change that results in non-compliance with this Section and providing proof that replacement coverage has been obtained prior to such cancellation or change. Licensee, within thirty (30) days of the Effective Date of this Agreement, must file with the County the required original certificate(s) of insurance with required endorsements with the County. The certificates and endorsements are, subject to the County's approval, and approval is required prior to any rights granted to Licensee becoming effective. The documentation must clearly state all of the following.

8.1.1 Policy number; name of insurance company; name, address, and telephone number of the agent or authorized representative of the same; the name and address, of insured; project name and address; policy expiration date; and specific coverage amounts. Each policy of insurance required by this Agreement must be issued by a responsible insurance company qualified and authorized to do business in the State of Maryland.

8.2 Workers' Compensation and Employer's Liability Insurance. Licensee must carry and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount of five hundred thousand dollars (\$500,000) or such other amounts if required by Maryland law and furnish the County with a certificate of insurance showing proof of such coverage.

8.3 Certificates of Insurance. The certificate(s) of insurance with the required endorsements and notices will be mailed to:

Office of Broadband Programs – Pole Licensing
Department of Technology & Enterprise Business Solutions

100 Maryland Ave, Suite 2600
Rockville, Maryland 20850
OBP@montgomerycountymd.gov

SECTION 9. SECURITY INSTRUMENTS

Licensee must deposit or file with the County a cash security deposit, a surety bond, or a letter of credit (collectively, “security instruments”) in a form acceptable to the County Attorney, within thirty (30) thirty days of the Effective Date, in the amount of Fifty Thousand Dollars (\$50,000) as security for the faithful performance by Licensee of the provisions of this Agreement and Applicable Law. If Licensee fails to pay the County any fees or costs within sixty (60) days of receipt of notice to pay from the County or fails to comply with any provision of this Agreement or the Applicable Laws that can be remedied by an expenditure from the security instrument, then the County may proceed to immediately withdraw the amount thereof or proceed against the surety bond or the letter of credit. Such action by the County is in addition to any other remedy provided to the County by this Agreement or Applicable Law. If this Agreement is terminated or revoked for cause by the County, the security deposit, the surety bond, or the letter of credit will become the property of the County, unless there are no outstanding defaults or County claims, or moneys owed to the County, in which case, Licensee may request that the County return the security deposit, the surety bond, or the letter of credit to Licensee.

SECTION 10. NOTICES AND CONTACT PERSONS

Notices under Section 4.4.1 or 4.8 to the Staff Emergency Contact identified in Section 4.10 may be sent by electronic mail, call, or text. The notice date for these communications shall be the date of the electronic mail, call, or text.

All other notices, requests, modifications, and communications that are required to be in writing must be personally delivered or mailed via first class mail AND emailed to the addresses below:

Licensee: Name
 Title
 Address
 City
 EMAIL:

County: Chief Administrative Officer
 Executive Office Building
 101 Monroe Street
 Rockville, Maryland 20850
 EMAIL:

With a copy to: Director, Department of Transportation
101 Monroe Street – 10th Floor
Rockville, Maryland 20850
EMAIL:

With a copy to: Chief Broadband Officer,
Office of Broadband Programs
Department of Technology & Enterprise Business Solutions
100 Maryland Ave, Suite 2600
Rockville, Maryland 20850
EMAIL: OBP@montgomerycountymd.gov

Any bond must be delivered or mailed to:
Director, Department of Permitting Services
255 Rockville Pike, 2nd Floor
Rockville MD 20850
EMAIL:

The Parties may change the persons, addresses, and numbers for receipt of notices, requests, modifications and other communications by written notice to the other Party at the last noticed address.

Notices and/or communications sent via first-class mail will be deemed received three (3) days from the date of the mailing of the document. Notices sent via electronic communication will be deemed received one (1) business day from the date the communication was sent.

SECTION 11. TRANSFER

11.1 Binding Upon Successors. This Agreement is binding upon the successors and assigns of the parties hereto.

11.2 Non-Transferable. Licensee must not transfer or assign the Agreement or the Authorized Pole Attachments, or any interest in, any part thereof, without the express prior written consent of the County, which consent will not be unreasonably withheld, conditioned, or delayed. Authorized Replacement Poles and affected street furniture are owned by County and non-transferable. A change in the control of Licensee, or Licensee's parent company will be treated as a transfer or assignment of the Agreement or facilities for purposes of this section. "Control" includes working control, however exercised. Licensee must give the County at least one hundred twenty (120) days prior written notice of any proposed assignment or transfer for which the County's consent is required hereunder. The County will give Licensee written approval or disapproval of any such proposed assignment or transfer within a reasonable time period not to

exceed ninety (90) days after the County receives Licensee's request therefor. The County's failure to approve or disapprove any such request within such ninety (90) day period will be deemed an approval. Licensee must provide all information and documents reasonably requested by the County relating to the assignment or transfer. Notwithstanding any assignment or transfer, Licensee must remain fully liable under this Agreement and must not be released from performing any of the terms, covenants, or conditions of this Agreement without the express written consent to the release of the Licensee by the County. Transferees, successors, and assigns may not exercise any rights under this agreement without becoming parties to this Agreement and providing the required bonds and insurance. Rights under this license are not divisible and may not be sub-let.

SECTION 12. TERMINATION AND DEFAULT

12.1 Event of Default. An event of default will be deemed to have occurred hereunder by Licensee if:

12.1.1 Licensee breaches any term or condition of this Agreement or any permit condition;

12.1.2 Licensee fails to perform, observe or meet any covenant or condition made in this Agreement;

12.1.3 Licensee repeatedly fails to maintain or repair its facilities, remove graffiti, remove abandoned facilities; or

12.1.4 At any time, any representation, warranty, or statement made by Licensee herein is incorrect or misleading in any material respect.

12.2 Revocation. The County may revoke the Agreement or terminate an Eligible Pole Confirmation in the event of default, subject to reasonable notice and the opportunity to cure.

12.3 Default. The County will provide written notice of an event of default to the Licensee. If the default is not cured within thirty (30) days of written notice of default (or, if such default is not curable within thirty (30) days, if the defaulting party fails to commence such cure within thirty (30) days or thereafter is unable to cure or fails to diligently prosecute such cure to completion), the County may terminate this Agreement or an Eligible Pole Confirmation. A transfer without approval, or the intentional submission of false or misleading information, shall be deemed incurable, and make the Agreement or Eligible Pole Confirmation subject to immediate termination.

12.4 Termination. In the event of termination:

12.4.1 Licensee's indemnity obligations must continue with respect to any claims or demands related to Licensee's Authorized Pole Attachments, Authorized Replacement

Poles, affected street furniture, or any other activities related to this Agreement. Licensee must continue to pay all fees and charges and continue to comply with all obligations and Applicable Standards hereunder pending the actual removal of all Authorized Pole Attachments and Authorized Replacement Poles. Upon termination of this Agreement in accordance with the provisions, Licensee must remove its Authorized Pole Attachments or Authorized Replacement Poles within six (6) months of receiving notice. “Actual removal” requires Licensee to remove Authorized Pole Attachments from Poles that were not replaced, and restore the Pole to its prior condition, reasonable wear and tear excepted. Authorized Replacement Poles and street furniture used for Authorized Pole Attachments must be replaced with Poles and street furniture consistent with the corridor at the time of termination; provided, at its option, County may permit Licensee to leave all or part of an Authorized Replacement Pole or replaced street furniture in place. “Actual removal” includes restoration of affected rights-of-way and other County property in accordance with Applicable Law. If not so removed within that time period, the County will have the right to remove Licensee's Authorized Replacement Poles and Authorized Pole Attachments, and further to require reimbursement for the cost of removal, installation of County Poles and street furniture, and restoration of affected property.

12.4.2 The rights under this section are not exclusive remedies. The County may seek injunctive relief, mandamus, or any other appropriate relief as may be necessary to enforce or correct a violation of the provisions of the Law or this Agreement. All of the Licensee’s duties to County under this Agreement continue until all Authorized Replacement Poles and Authorized Pole Attachments have been removed, and all work associated with removal have been completed.

12.5 Reservation of Rights. The right to terminate is in addition to the right of the County to terminate any permit, license, lease, franchise, or other authorization for failure to comply with the terms thereof, or where continued use of Poles will interfere with the County’s exercise of its rights reserved herein.

SECTION 13. PROHIBITION ON LIENS AND SECURITIES

Licensee may not permit a lien to be placed on County property or use County property as any form of security, including security for any mortgage, loan, or hypothecation.

SECTION 14. MISCELLANEOUS PROVISIONS

14.1 Written Amendment. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

14.2 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein and supersedes all prior understandings and agreements, whether written or oral. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. The recitals stated above and all exhibits referred to in this Agreement and any Eligible Pole Confirmations, addenda, attachments, and schedules are by such reference incorporated in this Agreement and will be deemed a part of this Agreement.

14.3 Force Majeure. Except with respect to Sections 4.1.2, 4.4, 6.1, and 6.3, if either County or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, global pandemic, civil commotion, explosion, acts of terrorism, embargo, or acts of the government in its sovereign capacity, then performance of such acts will be excused for the period of the unavoidable delay, and the affected party will endeavor to remove or overcome such inability as soon as reasonably possible.

14.4 Separate Entities. It is expressly understood that the County will not be construed or held to be a partner or associate of Licensee in the conduct of Licensee's business.

14.5 Beneficiaries of Agreement. Except as otherwise expressly provided in this Agreement, this Agreement does not inure to the benefit of, or be enforceable by, or create any right or cause of action to, any person or entity other than the Parties hereto.

14.6 Confidential Information. The County and Licensee will use, restrict, safeguard and dispose of all information related to this Agreement and associated permits, in accordance with all relevant federal and local statutes, regulations, and policies.

14.7 Failure to Enforce. Failure of the County or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated does not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same will remain at all times in full force and effect until terminated, in accordance with this Agreement.

14.8 Maryland Law Governs. This Agreement must be governed by and construed in accordance with the laws of the State of Maryland, without reference to its conflicts of law principles. In the event that suit is brought by a party to this Agreement, the parties agree that trial of such action must be vested exclusively in the state courts of Maryland, or in the United States District Court of Maryland, Southern Division.

14.9 Severability. If any one or more of the provisions of this Agreement, other than provisions of Sections 3, 4, 5, or 6, are held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) will be deemed severable from the remaining provisions of this Agreement and will in no way affect the validity of the remaining portions of this Agreement.

14.10 Non-Discrimination. Licensee agrees to comply with the non-discrimination in employment policies in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code 2014, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. Licensee assures the County that, in accordance with applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of age, color, creed, national origin, race, religious belief, sexual preference, or handicap.

IN WITNESS WHEREOF, the parties hereto have executed this Pole Attachment Agreement in duplicate on the day and year first written above.

NAME _____
Title _____
Company _____

DATE

RICHARD S. MADALENO, JR.
Chief Administrative Officer
Montgomery County, Maryland

DATE

APPROVED AS FORM AND LEGALITY

CLIFFORD L. ROYALTY
Chief, Division of Zoning, Land Use & Economic Development
Office of the County Attorney
Montgomery County, Maryland

DATE

(Based on advice from Best, Best & Krieger)